

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2003-342-C – ORDER NO. 2004-329  
AUGUST 2, 2004

IN RE: Phillip A. Bragg d/b/a ALCO Bonding,	)	DECLARATORY ORDER
	)	
Complainant,	)	
	)	
vs.	)	
	)	
Talton Communications of Carolina, Inc. and	)	
Evercom Systems, Inc.,	)	
	)	
Respondents.	)	
_____	)	

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on two competing petitions: first, a Petition for Declaratory Order or in the Alternative For Appropriate Damages (“Bragg Petition”) filed by Complainant/Petitioner Phillip A. Bragg d/b/a ALCO Bonding (“Mr. Bragg” or “ALCO Bonding”) and second, a Cross-Petition for Declaratory Order (“Evercom Petition”) filed by Defendants/Respondents Talton Telecommunications of Carolina, Inc. and Evercom Systems, Inc.<sup>1</sup>

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<sup>1</sup> Mr. Bragg named Talton Communications of Carolina, Inc. as a Defendant/Respondent in the above-captioned action; however, the correct legal name for Talton Communications of Carolina, Inc. was Talton Telecommunications of Carolina, Inc. (“Talton Telecommunications”). In 1998, Talton Telecommunications merged with and into Talton Invision, Inc. (“Talton Invision”), and shortly thereafter Talton Invision changed its name to Evercom Systems, Inc., the other Defendant/Respondent named in this

The Commission conducted a formal hearing in this matter on March 25, 2004, at 2:30 p.m. in the office of the Commission, with the Honorable Mignon L. Clyburn, presiding. M. Greg McCollum, Esquire, and Glenn V. Ohanesian, Esquire, represented Mr. Bragg. Mitchell Willoughby, Esquire, and K. Chad Burgess, Esquire, represented Evercom. F. David Butler, Esquire, appeared on behalf of the Commission Staff.

Mr. Bragg was the only witness to testify in support of the Bragg Petition. In support of the Evercom Petition, Evercom presented the testimony of Diane Spikings, Manager, Sales/Service Call Centers, and Colleen A. Dziuban, Director – Governmental Affairs. The Commission Staff did not present any witnesses at the hearing.

## **II. FINDINGS OF FACT**

After carefully considering the evidence, including the testimony and exhibits presented in this docket as well as a thorough examination of the terms and conditions of Evercom's tariff and the applicable statutes, the Commission makes the following findings of fact:

### **A. The Parties**

1. Mr. Bragg is the owner of ALCO Bonding, which has its principal place of business in the City of Myrtle Beach in Horry County, South Carolina. ALCO Bonding is a sole proprietorship, offering services as bail bondsmen to prison and jail detainees. At all times relevant to these petitions, Mr. Bragg's local exchange carrier

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action. See Commission Order 98-818; Hearing Exhibit No. 3 (CAD-10). For the sake of convenience and clarity Talton Telecommunications of Carolina, Inc. and Evercom Systems, Inc. are collectively referred to as "Evercom."

(“LEC”) for local telephone service was General Telephone (“GTE”). GTE had assigned Mr. Bragg telephone number 803-448-6224 for the use of his business.

2. Evercom is a telephone utility that installs, operates, and maintains automated collect-only telephones and associated equipment in certain local and county correctional facilities within South Carolina. Through the use of its automated collect-only telephones and associated equipment, Evercom furnishes telephone service to correctional facilities which, in turn, grant certain detainees the privilege of placing collect-only telephone calls from the correctional facility to certain telephone numbers.<sup>2</sup> As germane to this proceeding, Evercom has been duly issued a Certificate of Public Convenience and Necessity by this Commission to operate in South Carolina as a telephone carrier providing “local automated collect calls from confinement facilities only.” *See* Order No. 91-122, in Docket No. 90-305-C, dated March 4, 1991. Further, Evercom has on file with this Commission an approved tariff entitled South Carolina Telecommunications Tariff, which “contains the descriptions, regulations, and rates applicable to the furnishing of service for inmate telecommunications services” (the “Evercom Tariff”).

### **B. Evercom’s Telephone Services**

3. In 1995, Evercom entered into a License Agreement with Horry County. In the license agreement, Evercom was granted the exclusive right, license, and privilege

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<sup>2</sup> Pursuant to Section 2.2.5 of Evercom’s tariff, calls to telephone numbers assigned to Evercom itself and other numbers identified by prison authorities may be blocked by Evercom in the interest of public safety or to avoid harassment. For example, at the direction of the prison facility’s authorities Evercom prevents detainees from calling members of the judiciary by placing a block upon these telephone numbers. Further, pursuant to Section 2.2.6 of Evercom’s Tariff, calls dialed 10XXX+0, 1-800, 950, 911, 900, 976, 700, 411 and other information calls are blocked as well.

to install, operate and maintain automated, collect-only telephone equipment within the Long Detention Center. Pursuant to the terms of the License Agreement, Evercom installed automated, collect-only telephone equipment and began providing automated, collect-call only telephone service to the Long Detention Center for the use and benefit of those detainees granted telephone privileges by the confinement facility warden.

4. In 1997, if a detainee wished to make an automated, collect-call from the Long Detention Center and was authorized by the Long Detention Center to do so, the detainee simply lifted the telephone receiver from the cradle and dialed the telephone number that the detainee wished to call, including the area code. After dialing the telephone number that the detainee wished to call, Evercom's call processor located in the Long Detention Center determined whether the telephone number could be called.

5. If the telephone number was not accessible, then the detainee was informed by an automated response that the dialed number was restricted, and the call would disconnect. If, however, the telephone number was accessible, then the call was placed to the called party. Upon receiving the call, the called party heard a recording and was informed that the incoming call was from a detainee at the county jail.

6. If the called party wanted to accept the call and agreed to pay the charges, then the called party was prompted to press "0" on his or her telephone. If the called party did not wish to accept the call or refused to pay the charges, then the called party was prompted to press "1" on the telephone. In the event that no one answered the phone at the called number, an automated message informed the detainee that the called party was unavailable.

7. A called party who accepted a local, automated collect-call from a detainee at the Long Detention Center was billed for a local collect-call at Evercom's tariffed rates; however, because Evercom knew the billed party only by his or her telephone number and did not have a service agreement with such party, Evercom did not bill the billed party directly for the charges accepted.<sup>3</sup> In this case, as is customary, the billed party was billed through his LEC, namely General Telephone, which is another telephone carrier operating pursuant to authority granted by this Commission.

8. Pursuant to a billing and collection agreement between Evercom and GTE, GTE billed and collected payment for all of the collect calls completed by Evercom in GTE's service area in 1997, including collect-call charges accepted for telephone number 803-448-6224.

9. At the end of each billing cycle, Evercom matched electronically a billed party's telephone number to the corresponding charges incurred by the billed party based upon the calling data received from Evercom's call processor at the Long Detention Center. The call processor at the Long Detention Center did not have access to identifying information such as the name or address of the billed party. Identifying information related to a billed party was known only to GTE.

10. After Evercom matched the billed party's telephone number to the corresponding charges, Evercom submitted a bulk bill to GTE for billing and payment collection. GTE, in turn, matched the telephone number with the person or entity to which the number was assigned and submitted a monthly bill to its customer for the

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<sup>3</sup> Once the called party agrees to accept the charges for a collect-call, he or she is then defined as a billed party under Evercom's approved tariff. The tariff specifically defines a billed party as "[t]he individual which is billed for a call."

telephone charges incurred on Evercom's system by such customer as the billed party during the previous month.

11. Evercom had no knowledge of the billed party's identity, and, based on proprietary and privacy issues, GTE did not share any information with Evercom that informed it of the billed party's identity.

12. As part of the monthly bill submitted to its customers for payment, GTE included an additional bill page(s) as agreed under its billing and collection agreement with Evercom, which indicated the amount of charges that the GTE customer and Evercom billed party incurred as a result of accepting charges from collect-calls placed by detainees jailed at the Long Detention Center.

13. Within the allowed payment period, the billed party was required to remit payment to GTE, and GTE in turn paid Evercom less the costs of billing and collection. Consequently, without manual intervention because of failure to pay or other reasons, Evercom never knew the billed party's identity, address, or nature of business, as GTE's pass-through payments to Evercom were identified only by telephone numbers.

14. Evercom introduced into the record a computer-based print out of an electronic version of the telephone bills that Mr. Bragg received from GTE. *See* Hearing Exhibit No. 4 (CAD-3 thru CAD-9). The telephone bills introduced at the hearing contain the following information:

- a. In April 1997, GTE submitted a monthly telephone bill to Mr. Bragg, which included an additional bill page(s) indicating that Mr. Bragg accepted the charges to approximately forty-five (45) collect-calls made over Evercom's system. Moreover, Mr. Bragg's telephone bill clearly states, "BILLING FOR TALTON TELECOMM." Furthermore, by examining page 5

of Exhibit No. 4 (CAD-3), Mr. Bragg's telephone bill clearly states, "TAXES AND FEES ON TALTON TELECOMM REGULATED SERVICES." Moreover, by examining page 6 of Exhibit No. 9 (CAD-3), Mr. Bragg's telephone bill clearly states, "TALTON TELECOMM REGULATED SERVICE CHARGES" AND "TOTAL LONG DISTANCE/TALTON TELECOMM."

- b. In May 1997, GTE submitted a monthly telephone bill to Mr. Bragg; however, no reference is made to Evercom on Mr. Bragg's telephone bill.
- c. In June 1997, GTE submitted a monthly telephone bill to Mr. Bragg; however, no reference is made to Evercom on Mr. Bragg's telephone bill.
- d. In July 1997, GTE submitted a monthly telephone bill to Mr. Bragg; however, no reference is made to Evercom on Mr. Bragg's telephone bill.
- e. In August 1997, GTE submitted a monthly telephone bill to Mr. Bragg; however, no reference is made to Evercom on Mr. Bragg's telephone bill.
- f. In September 1997, GTE submitted a monthly telephone bill to Mr. Bragg; however, no reference is made to Evercom on Mr. Bragg's telephone bill.
- g. In October 1997, GTE submitted a monthly telephone bill to Mr. Bragg, which included an additional bill page(s) indicating that Mr. Bragg accepted the charges to approximately sixty-eight (68) collect-calls made over Evercom's system. Moreover, Mr. Bragg's telephone bill states, "BILLING FOR TALTON TELECOMM." Furthermore, by examining page 5 of Exhibit No. 4 (CAD-9), Mr. Bragg's telephone bill states, "TAXES AND FEES ON TALTON TELECOMM REGULATED SERVICES." Moreover, by examining page 6 of Exhibit No. 4 (CAD-9), Mr. Bragg's telephone bill states, "TALTON TELECOMM REGULATED SERVICE CHARGES" AND "TOTAL LONG DISTANCE/TALTON TELECOMM."

15. Mr. Bragg testified, however, that he did not conduct a comprehensive review of the telephone bill or the additional bill page(s) submitted to him by GTE. Specifically, Mr. Bragg stated,

I rarely look beyond the first page of a phone bill where it tells me how much I owe. When I see that, I write the check and send it. I knew business was down, but had no idea why it was down. I had no inkling that I needed to be inspecting all the fine print included on a complicated phone bill. I got the bills and paid them, that simple. There's not enough discrepancy in the phone bills. When I check the phone bill and the first page is in line with the rest of the month, there's not enough discrepancy in the phone bills for me to notice that. I would not have checked that unless somebody had brought it to my attention.

(Bragg, p.49, lines 13-19).

**C. Evercom's Policy of Blocking Calls**

16. Evercom employs a payment verification point system in order to manage the volume of calls that is placed over Evercom's system. When a billed party either meets or exceeds their payment verification point, Evercom blocks the billed party's telephone number from receiving calls placed on Evercom's system. The payment verification point system employed by Evercom is a process which the Company claims is designed to (i) protect against fraud, (ii) prevent harassment, and (iii) actively manage the amount of charges incurred by a billed party.

17. As for the payment verification point process itself, Ms. Spikings testified at the hearing that after Evercom places a block upon a telephone number, an Evercom customer service representative calls the blocked telephone number and asks to speak with the person responsible for the telephone bill or the account holder. (Spikings, p.140,



line 25-p.141, line 5). Upon reaching the person responsible for the telephone bill or the account holder, the customer representative informs the billed party that Evercom placed a block on his or her telephone number because the amount of calls accepted at the telephone number either met or exceeded the established payment verification point. The customer service representative then verifies whether the billed party had paid the outstanding telephone charges.

18. If the billed party has already paid his or her telephone charges, Evercom accomplishes payment verification by establishing a three-way call with Evercom, the billed party, and the billed party's billing provider. Upon receiving a satisfactory response from the billed party's billing provider that payment had been received, Evercom removes the block if the billed party wants the block to be removed.

19. If the billed party has not paid his or her telephone charges, then Evercom requests the billed party to remit payment of his or her collect-call charges to the billed party's billing provider on Evercom's behalf. Upon remittance by the billed party, Evercom accomplishes payment verification by simply establishing a three-way call with Evercom, the billed party, and the billed party's billing provider. Upon receiving a satisfactory response from the billed party's billing provider that payment had been received Evercom removes the block if the billed party wants the block removed.

20. Ms. Spikings testified at the hearing that in her opinion the billed party typically appreciates Evercom's call management of the billed party's collect-call charges because in most instances, the billed party is not aware that they had incurred collect-call charges. (Spikings p.142, lines 2-4; p.142, lines 18-23). Moreover, Ms. Spikings

testified that fifty percent (50%) of the time, the billed party requests that Evercom leave the block in place. (Spikings p.141, lines 17-20).

21. In addition to providing telephone service to correctional facilities, Evercom also partners with other telephone utilities that provide similar telephone services to correctional facilities. For example, AT&T, Sprint, and BellSouth Public Communications, all of whom provide telephone services to correctional facilities, have established partnerships with Evercom in which Evercom provides a number of services. (Spikings p.139, lines 12-15). One such service that Evercom provides to these telephone utilities is call management. (Spikings p.139, lines 6-11). Evercom manages the call volumes of AT&T, Sprint, and BellSouth Public Communications through the use of these telephone utilities' payment verification point process – the same payment verification point process employed by Evercom. Moreover, Ms. Spikings testified that the payment verification point process is standard within the industry. (Spikings, p. 140, lines 1-2)

22. The Commission is fully aware and cognizant of the fact that telephone utilities, like Evercom, who provide telephone services to correctional facilities, confront a number of challenges that other telephone utilities may not otherwise encounter. One such challenge that Evercom claims to routinely encounter is efforts by detainees to fraudulently use its telephone services. Ms. Dziuban underscored this challenge by testifying under cross-examination, "I cannot underestimate how rampant fraud is in this business." (Dziuban p.196, line 3-4). In order to protect against the risk of fraudulent and harassing use of its telephone services, Evercom routinely blocks telephone numbers

from receiving calls placed over Evercom's system – a practice that is standard among telephone utilities that provide telephone services to correctional facilities. (Dziuban p.193, lines 20-22). In fact, correctional facilities typically encourage Evercom to block certain telephone numbers in order to curtail and prevent harassment and fraudulent operations from occurring through detainees' use of telephones. (Dziuban p.197, lines 12-14).

23. The process of blocking telephone numbers from receiving calls placed from correctional facilities is not a novel issue to the Commission. In 1990, the Commission held an all-encompassing general proceeding to address certain issues involving telephone utilities that provided automated, collect-call service to correctional facilities. In this generic proceeding the Commission found that a number of benefits were realized from the use of automated, collect-call service in correctional facilities. Recognizing the importance of blocking telephone numbers from receiving calls from correctional facilities, the Commission found in Commission Order No. 91-122,

9. Harassment calls from inmates to jurors, witnesses, and county personnel have been virtually eliminated by utilizing the selective number blocking feature available through store and forward technology.

24. In addition to the benefit of blocking access to certain telephone numbers, the Commission also recognized that fraud is commonplace among detainees who use telephone services provided to correctional facilities. While realizing that fraud cannot be totally eliminated in correctional facilities, the Commission has noted that fraudulent activity may be reduced through the use of automated, collect-call telephone service. In its Order No. 91-122, the Commission found,

10. Because the telephones are automated, collect-only phones, fraudulent calling is much more difficult for the inmates. The critical factor in the operation of these phones which makes them less susceptible to fraud is that the inmate has no access to an outside line until the call is connected to and accepted by a party at the number which he has dialed. This prevents the inmate from having access to a live operator and prevents him from receiving a secondary dial tone.

25. In addition to the use of the call blocking process to protect against harassment and fraud, Ms. Dziuban testified that by blocking access to certain telephone numbers from correctional facilities Evercom's call blocking process also protects the billed party from otherwise receiving a sizable telephone bill for charges that the billed party may not have agreed to pay or from being surprised at the amount of a bill for accepting many and frequent collect calls. (Dziuban p.195, lines 20-24).

26. Because approximately 50% of billed parties do not want the call blocks removed, Evercom claims that it does not attempt to guess or speculate about the wishes of a billed party.

#### **D. The Dispute**

27. On April 9, 1997, Evercom blocked telephone number 803-448-6224 from receiving calls placed over Evercom's system because the amount of collect-calls billed to this number had either met or exceeded the payment verification point.

28. When the block was made, Evercom did not know to whom telephone number 803-446-6224 was assigned, but, consistent with its policy and practice, promptly called the number on April 10, 1997, and advised Mr. Bragg, through his authorized agent, that a block had been set. Mr. Bragg did not return Evercom's April 10 telephone

call notifying him of the block until September 26, 1997. At the time, the payment verification point for 803-448-6224 was one hundred dollars (\$100).

29. ALCO Bonding's answering service answered Evercom's call, and Evercom's customer service representative informed the answering service that Evercom had blocked 803-448-6224 from receiving calls placed over Evercom's system. When the answering service informed Evercom that 803-448-6224 was assigned to a bail bonding company, Evercom requested the answering service to inform the billed party that Evercom had blocked 803-448-6224 from receiving collect calls on Evercom's system and to have the billed party return Evercom's telephone call to provide confirmation of his identity and his wishes regarding the block. The business records of Evercom introduced at the hearing summarized the conversation as follows:

04-10-97 . . . . ANW SERVICE ADVSD THAT THIS IS A  
BONDING CO. . . WILL HAVE BONDING CO CALL US  
BACK IN REF TO BLK. . . . WHEN WE GET INFOR  
GIVE TO DIANE OR HEATHER TO RAISE LIMIT  
AND REMOVE BLK.

30. Mr. Bragg does not dispute the fact that Evercom left a message with his answering service. At the hearing, Mr. Bragg admitted that he more than likely discarded Evercom's telephone message. Mr. Bragg stated on direct examination,

I get phone calls all the time, like everybody else, from various phone companies trying to get me to use their services. If they left a generic message like that, which is likely based upon their notes, that message would have made it to the trash pile.

(Bragg, p. 49, lines 5-6).

31. Mr. Bragg did not return Evercom's call to resolve the block until September 26, 1997; consequently, the block remained in place from April 9, 1997, until September 26, 1997. Evercom did not connect any collect calls over its system to 803-448-6224 during this period. *See* Hearing Exhibit No. 4 (CAD-3 thru CAD-9).

32. After Mr. Bragg contacted Evercom on September 26, 1997, and provided information to confirm his status as a bail bondsman and his desire to have an increased payment verification point, Evercom promptly removed the block.

#### **E. The Lawsuit**

33. In March 2000, Mr. Bragg filed a lawsuit in the Court of Common Pleas for Horry County, which Evercom subsequently removed to the United States District Court, Florence Division.

34. Based upon a motion filed by Evercom, the Court issued an order dated November 22, 2002, which stated, in pertinent part,

[A]fter reviewing the entire record in this case, the Court agrees that jurisdiction over the issues presented in this action are more properly brought before the South Carolina Public Service Commission for review.

Furthermore, the Court ruled, “. . . this lawsuit is hereby stayed pending resolution of matters properly to be decided by the South Carolina Public Service Commission at a later date. Either party may hereafter petition the South Carolina Public Service Commission to assume such jurisdiction over any and all issues presented in [Mr. Bragg's] complaint and render such disposition of the same as appropriate.”

35. On November 19, 2003, Mr. Bragg filed the Bragg Petition with the Commission. In response to the Bragg Petition, Evercom timely filed the Evercom

Petition on December 10, 2003, which it subsequently amended on January 13, 2004, with the consent of opposing counsel.

### **III. CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Commission concludes, as a matter of law, the following:

#### **A. Evercom is a telephone utility.**

1. In its Cross-Petition for Declaratory Order, Evercom seeks a declaratory order from the Commission finding that Evercom is a telephone utility as defined in S.C. Code Ann. § 58-9-10 (1976). At the hearing, Mr. Bragg admitted that Evercom is a telephone utility as defined in § 58-9-10.

2. Section 58-9-10 states:

The term “telephone utility” includes persons and corporations, their lessees, assignees, trustees, receivers or other successors in interest owning or operating in this State equipment or facilities for the transmission of intelligence by telephone for hire, including all things incident thereto and related to the operation of telephones.

3. Evercom is authorized by this Commission to provide telecommunications services for compensation. Such authorization was made pursuant to § 58-9-10 *et. seq.*

4. Therefore, based upon the clear, convincing, and uncontradicted evidence presented at the hearing, and the admission of Mr. Bragg, the Commission hereby concludes as a matter of law that Evercom is a telephone utility legally operating in the state of South Carolina under the provisions of Chapter 5 of Title 58 of the South Carolina Code and under the terms of a Certificate of Public Convenience and Necessity to provide local automated collect calls from confinement facilities only.

**B. Evercom is not a telegraph company, and S.C. Code Ann. § 58-9-1810 and S.C. Code Ann. § 58-9-1860 are only applicable to telegraph companies.**

5. In his lawsuit currently pending in the United States District Court before the Honorable C. Weston Houck, Mr. Bragg claims that Evercom violated S.C. Code Ann. § 58-9-1810 and § 58-9-1860, which only apply to telegraph companies. Evercom seeks a declaratory order from the Commission finding that both S.C. Code Ann. § 58-9-1810 and S.C. Code Ann. § 58-9-1860 are inapplicable to Evercom because it's not a telegraph company. At the hearing, Mr. Bragg, through counsel, acknowledged that §§ 58-9-1810 and 58-9-1860 are inapplicable to Evercom.

6. Section 58-9-1810 states:

Every electric telegraph company with a line of wires, wholly or partly in this State, and engaged in telegraphing for the public shall, during the usual office hours, receive dispatches, whether from other telegraphic lines or from individuals, and, on payment of the usual charges according to the regulations of such company, shall transmit and deliver them with impartiality and good faith, and with due diligence, under penalty of one hundred dollars. Such penalty may be recovered by suit before a magistrate or in any other court having jurisdiction thereof by either the sender of the dispatch or the person to whom it was sent or directed, whichever may first sue. Nothing herein shall be construed as impairing or in any way modifying the right of any person to recover damages for any such breach of contract or duty by any telegraph company and such penalty and such damages may, if the party so elect, be recovered in the same suit.

7. Section 58-9-1860 states, in pertinent part,

All telegraph companies doing business in this State shall be liable in damages for mental anguish or suffering, even in the absence of bodily injury, for negligence in receiving, transmitting or delivering messages, without regard to



relationship by blood or marriage or whether such messages afforded notice of such relationship or otherwise or that injury or damage would result if such anguish or suffering resulted as a matter of fact. In all actions under this section the jury may award such damages as they conclude resulted from negligence, wantonness, willfulness or recklessness of the telegraph companies. And when a telegram shows on its face that it relates to sickness or death, the real party for whose benefit the telegram was sent and who suffered mental anguish by reason of the negligence or willfulness of the telegraph company may recover damages as herein provided without being required to allege or prove that the telegraph company had notice or knowledge at the time the message was sent of his relation to it or of the extent or scope of his damage. . . .

8. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1983). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000).

9. Section 58-9-1810 only applies to an "electric telegraph company . . . engaged in telegraphing" and Section 58-9-1860 only applies to "telegraph companies." After careful review, consideration, and examination of the statutory language of § 58-9-1810 and § 58-9-1860, the Commission finds that based upon a plain reading of § 58-9-1810 and § 58-9-1860, the statutes are applicable only to telegraph companies. Moreover, at the hearing in this case, Mr. Bragg, through counsel, agreed that § 58-9-

1810 and § 58-9-1860 are applicable only to telegraph companies and that Evercom is not and was not a telegraph company. Accordingly, the Commission finds that, as a matter of law, § 58-9-1810 and § 58-9-1860 are not applicable to Evercom.

10. Finally, Mr. Bragg agreed, and the Commission agrees and concludes, that no liability can be imposed upon Evercom under either § 58-9-1810 or § 58-9-1860 because these statutes only address the conduct of telegraph companies and Evercom is not a telegraph company.

**C. The only tariff applicable during the April – September 1997 time period was the tariff originally filed by Coin Telephones, Inc.**

11. On March 4, 1991, the Commission approved a tariff entitled “South Carolina Telecommunications Tariff” filed by Coin Telephones, Inc., which contained “the descriptions, regulations, and rates applicable to the furnishing of service for inmate telecommunications services.” On May 9, 1995, the Commission approved an amendment to the tariff made by Talton Telecommunications, and on May 6, 1997, the Commission approved additional amendments to the tariff entitled “2nd Revised Sheet No. 11” and “2nd Revised Sheet No. 12.” This tariff was introduced into the hearing record as Exhibit No. 3 (CAD-13) to the prefiled testimony of witness Dziuban and is referred to herein as the Evercom Tariff.

12. Neither Mr. Bragg nor Evercom dispute that the applicable tariff for the services germane to this proceeding for the period of April – September 1997 was the Evercom Tariff. Therefore, after careful review, consideration, and examination of the corporate history of Evercom presented by Evercom at the hearing, and based upon the clear, convincing, and uncontradicted evidence presented at the hearing by Evercom, the

Commission finds that, at all times relevant to this proceeding, Evercom was operating under the tariff as originally filed by Coin Telephones, Inc. on March 4, 1991, as amended, and approved by the Commission. Consequently, the Commission finds that the only applicable tariff during the April – September 1997 time period was the Evercom Tariff, as amended and as introduced into the hearing record of this proceeding.

**D. Evercom had the right to place a block on telephone number 803-448-6224.**

13. Evercom does not dispute the fact that consistent with its practice, policy and industry standard it blocked 803-448-6224 on April 9, 1997.<sup>4</sup> However, Evercom asserts that it acted in complete accord with the terms and conditions of the Evercom Tariff.

14. Section 2.2.2 of the Evercom Tariff states,

The Company reserves the right to discontinue furnishing service, or limit the use of service necessitated by conditions beyond its control or when a customer is using service in violation of the law, the regulations of the particular correctional facility or the provision of this Tariff.

15. As discussed above, the Evercom Tariff was on file with and approved by this Commission at the time Evercom blocked telephone number 803-448-6224 from receiving detainee calls over its network. The Evercom Tariff had been reviewed and approved by the Commission and is therefore “entitled to the normal presumption of validity afforded to regulatory provisions.” *Parnell v. Farmers Telephone Coop.*, 289 S.C. 112, 344 S.E.2d 883, 886 (1986). Furthermore, a tariff has the force and effect of

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<sup>4</sup> It should be noted that the block only restricted Mr. Bragg’s number from receiving collect calls from detainees using Evercom’s network. The block did not otherwise affect his service in any way.

law and that subscribers and regulated industries are bound thereby whether or not they have expressly agreed thereto. *Clarke v. General Telephone Company of the Southeast*, 268 S.C. 92, 232 S.E.2d 26 (1977).

16. The operative language from section 2.2.2 of the Evercom Tariff is clear and unambiguous and states the “company reserves the right to discontinue furnishing services . . . .” This language clearly grants the company the privilege to discontinue service for any reason or no reason at all. Arguably, the company should not be permitted to discontinue service for arbitrary or capricious reasons, but in this case the facts clearly show that Evercom consistently applied a reasonable and prudent business practice. Accordingly, discontinuing service in this case was in full compliance with the Evercom tariff and, as a matter of law, was reasonable.

17. Moreover, the Commission has carefully reviewed the statutes regulating telephone companies and our rules and regulations, which apply thereto. The Commission is unaware of any statute, rule, regulation or order, and Mr. Bragg has not directed our attention to any such authority, that was violated by Evercom’s policy and practice of establishing a price verification point for telephone number 803-448-6224 as well as other telephone numbers and then blocking further access to that number by prison detainees. Accordingly, the Commission concludes as a matter of law that Evercom’s conduct in blocking access to number 803-448-6224 was not in violation of any law, regulation, rule or order governing the actions of telephone utilities in general and Evercom in particular.

18. After careful review, consideration, and examination of Section 2.2.2 of the Evercom Tariff, the Commission finds that based upon a plain reading of the tariff, Evercom possessed the right to block telephone number 803-448-6224 from receiving calls placed over Evercom's system because the amount of collect-call charges billed to this number had either met or exceeded the payment verification point assigned to this telephone number.

19. Further, at the hearing Evercom presented clear, convincing, and uncontradicted evidence showing the reasonableness and prudence in blocking telephone number 803-448-6224 from receiving calls placed over Evercom's system because the amount of collect-call charges billed to this number had either met or exceeded the payment verification point assigned to this telephone number. Therefore, based upon the clear, convincing, and uncontradicted evidence in the record, the Commission concludes that Evercom acted in a reasonable and prudent manner consistent with law, regulation and its approved tariff.

**E. Section 2.3.1 of the Evercom Tariff.**

20. Mr. Bragg and Evercom request that we issue a declaratory order as to whether and to what extent Section 2.3.1 of the Evercom Tariff limits the liability of Evercom based upon the facts presented in this case. The operative language of Section 2.3.1 is as follows:

The Company's liability for damages arising out of mistakes, interruptions, omissions, delays, errors or defects in the transmission occurring in the course of furnishing service, and not caused by the negligence of its employees or its agents, in no event shall exceed an amount equivalent to the proportionate charge to the customer or called party

for the period during which the aforementioned faults in transmission occur.

21. Based upon our conclusions of law that (i) Evercom acted in a reasonable and prudent manner in blocking access to telephone number 803-448-6224, (ii) Evercom's conduct was consistent with the terms of the Evercom Tariff, and (iii) Evercom did not violate any law, regulation, rule or order administered or issued by the Commission, it is not necessary for the Commission to analyze Section 2.3.1 or reach the issue of whether and to what extent Section 2.3.1 is applicable to the facts of this case. However because both parties have requested that we issue a declaratory order interpreting whether, under the facts of this case, Section 2.3.1 would limit Evercom's liability to Bragg, we take this opportunity to determine whether Section 2.3.1 of the Evercom Tariff limits the liability of Evercom and, if so, to what extent.

**(i) Rationale supporting Section 2.3.1.**

22. Before we construe Section 2.3.1, it is useful to discuss the intent underpinning Section 2.3.1 and other similar tariff provisions designed to limit liability by a regulated utility in connection with the provision of services.<sup>5</sup> Provisions limiting the liability of public utilities in providing service are based on legitimate considerations of public policy. *Parnell v. Farmers Tel. Coop, supra*. Reasonable utility rates are in part dependent on such limitation. *Id.* With this in mind, courts have long recognized that limiting the liability of public utilities serves a public interest by making low utility

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<sup>5</sup> It should be noted that these tariff provisions are generally limited to events associated with the provision of services while, for example, an accident with a utility company vehicle would not enjoy any such protection.

rates possible. *See W. Union Tel. Co. v. Esteve Bros. & Co.*, 256 U.S. 566, 41 S. Ct. 584, 65 L. Ed. 1094 (1921).

23. Section 2.3.1 is very similar to the limitation of liability clause examined in *Pilot Indus. v. S. Bell Tel. and Tel. Co.*, 495 F.Supp 356. (D.S.C. 1979). In similar fashion to that of Mr. Bragg, Pilot Industries filed a lawsuit against Southern Bell alleging lost business opportunities and other losses as a result of interruptions in its telephone service. At the time of the dispute, Southern Bell's tariff contained a limitation of liability clause. The limitation of liability clause in Southern Bell's tariff, similar to Section 2.3.1, stated,

The liability of the company for damages arising out of the mistakes, omissions, interruption, delays, errors, or defects in transmission, or failure or defects in facilities furnished by the company occurring in the course of furnishing service for facilities and not cause [sic] by the negligence of the subscriber, or of the company in failing to maintain proper standards of maintenance and operations and to exercise reasonable supervision shall in no event exceed an amount equivalent to the proportional charge to the subscriber for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission or defect or failure in facilities occurs.

24. As part of the Court's analysis Judge Chapman discussed the rationale supporting Southern Bell's tariff. Judge Chapman stated,

The courts have long recognized the relationship between the limiting of liability of telephone companies as it relates to the public interest served by utility rates. As Justice Brandeis stated in a similar context, 'The limitation of liability [is] an inherent part of the rate.'

...

There is nothing harsh or inequitable in upholding such a limitation of liability when it is thus considered that the

rates as fixed by the Commission are established with the rule of limitation in mind. Reasonable rates are in part dependent upon such a rule.

*Id.* In finding that the limitation of liability clause was reasonable and controlling, Judge Chapman further stated, “The limitation [of liability clause] exists as an integral part of the rate-making function, a function that it is totally regulated by state and federal agencies.”

**(ii) Applicability of Section 2.3.1.**

25. As we concluded above, Evercom acted in a reasonable and prudent manner in blocking access to telephone number 803-448-6224 and did not violate any law, regulation, rule or order administered or issued by the Commission. Consequently, by acting in a reasonable and prudent manner and consistent with its tariff in blocking access to telephone number 803-0448-6224, Evercom, as a matter of law, is not responsible for a mistake, interruption, omission, delay, error or defect in transmission in the course of furnishing service. Therefore, Section 2.3.1 is not at issue in this case.

26. Assuming *arguendo*, however, that Evercom’s conduct of blocking access to telephone number 803-448-6224 unreasonably resulted in a mistake, interruption, omission, delay, error or defect in transmission, the Commission finds that Section 2.3.1 is designed, intended to, and would limit the liability of Evercom to an amount equivalent to the proportionate charge assessed Mr. Bragg during the period of any mistake, error, omission, interruption, delay, or defect in transmission occurring in the course of furnishing service.



27. In this case, therefore, because Evercom did not collect any charges from Mr. Bragg for any unconnected blocked calls while the block was in place, then no “equivalent” or “proportionate” amount would be due.

28. Evercom transmitted collect-calls from the Long Detention Center by the most direct and practical route and billed the collect-calls as local collect-calls at Evercom’s tariffed rates.

29. Evercom seeks a declaratory order from the Commission determining that both before and after the block, all calls to the Myrtle Beach office of either ALCO Bonding or its answering service from the Long Detention Center were handled and billed as intrastate local calls and that this handling and billing complied with the requirements of S.C. Code Ann. § 58-9-2150. Therefore no penalties should be imposed upon Evercom under § 58-9-2150.

30. S.C. Code Ann. § 58-9-2150 states:

Any message delivered to a telegraph or telephone company within this State for transmission to any other point within this State shall be as a matter of fact, and regarded as a matter of law, as and for an intrastate transaction and shall be transmitted by such company by the most direct and practical route within this State.

31. At the hearing, Evercom submitted clear and convincing evidence that both before and after the block, all calls to the Myrtle Beach offices of either ALCO Bonding or its answering service were routed over intrastate lines and billed as local calls. This routing therefore complied with the “most direct and practical” intrastate routing requirements of § 58-9-2150. Mr. Bragg did not submit any evidence to contradict this evidence.

32. Therefore, based upon the clear, convincing, and uncontradicted evidence presented by Evercom at the hearing, the Commission finds that both before and after the block, all calls to the Myrtle Beach office of either ALCO or its answering service from the Long Detention Center were handled and billed as intrastate local calls and that this handling and billing complied fully with the requirements of S.C. Code Ann. § 58-9-2150 and Evercom's tariff. Accordingly, Evercom is not liable for any statutory penalties under § 58-9-2150.

#### **IV. ORDER**

NOW THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY DECLARED AND ORDERED THAT:**

1. Mr. Bragg's Petition for Declaratory Order or in the Alternative for Appropriate Damages is hereby denied and dismissed.

2. Any allegations made by Mr. Bragg against Evercom asserting that Evercom violated its approved tariff, or any statute, rule, regulation or order administered or issued by the Commission may be properly brought before and determined under the jurisdiction of the Commission;

3. Evercom is a telephone utility as defined in S.C. Code Ann. § 58-9-10 (1976), fully authorized by this Commission under Chapter 5, Title 58 of the South Carolina Code, to provide local automated collect calls from confinement facilities.

4. The services offered by Evercom to the Long Detention Center, the automated collect-only calling privileges afforded detainees, and the block placed on telephone number 803-448-6224 are uniquely telephone services, not telegraph services.

For purposes of this proceeding, Evercom is not a telegraph company, and, therefore, South Carolina Code Ann. § 58-9-1810 and S.C. Code Ann. § 58-9-1860 are both inapplicable to Evercom, and no liability can be imposed upon Evercom under either § 58-9-1810 or § 58-9-1860;

5. For the period of April – September 1997, the Evercom Tariff on file with and approved by the Commission was the applicable tariff to containing “the descriptions, regulations, and rates applicable to the furnishing of service for inmate telephone service.”

6. In the Evercom Tariff, this Commission specifically authorized the reservation of discontinuing rights and Evercom specifically reserved “the right to discontinue furnishing service” and exercised that right in this case in a reasonable and prudent manner; consequently, any allegation that Evercom violated its tariff in placing a block on telephone number 803-448-6224 or that placing said block otherwise violated statutes, rules, regulation or orders administered or issued by the Commission are hereby dismissed.

7. The Commission has determined that Evercom’s conduct was reasonable and authorized by its tariff; consequently, Section 2.3.1. of the Evercom Tariff is not at issue in this proceeding. If it were at issue, however, Mr. Bragg’s damages, if any, would be limited by Section 2.3.1. of the tariff to an amount equivalent to the proportionate charge assessed Mr. Bragg during the time that the alleged mistake, error, omission, interruption, delay or defect in transmission occurred.

8. Both before and after the block, Evercom complied with the requirements of S.C. Code Ann. § 58-9-2150, and therefore Evercom is not subject to any penalties permitted by § 58-9-2150.

9. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Randy Mitchell, Chairman

ATTEST:

/s/  
G. O'Neal Hamilton, Vice Chairman

(SEAL)